

## EXHIBIT

### INTRODUCTION

Respondent Mark Leno is a member of the California State Assembly who has represented the 13<sup>th</sup> Assembly District since December 2002. Respondent Leno 2004 (“Committee”) was a controlled committee of Respondent Mark Leno. Respondent Jim Nickoff served as treasurer of Respondent Committee.

For the purposes of this stipulation, Respondents’ violations of the Political Reform Act (the “Act”)<sup>1</sup> are stated as follows:

- COUNT 1: Respondents Mark Leno, Leno 2004 and James Nickoff failed to timely file a late contribution report that was due on or about February 20, 2004, disclosing the receipt of five contributions of \$3,200 each from (1) Committee to Re-elect Gloria Negrete McLeod; (2) Friends of Pedro Nava 2004; (3) Juan Arambula for Assembly; (4) Patty Berg for Assembly 2004; and (5) Wolk for Assembly, on or about February 19, 2004, in violation of section 84203, subdivision (a) of the Government Code.
- COUNT 2: Respondents Mark Leno, Leno 2004 and James Nickoff failed to timely file a late contribution report that was due on or about February 21, 2004, disclosing the receipt of \$3,200 from Heidi von Szeliski for Assembly, on or about February 20, 2004, in violation of section 84203, subdivision (a) of the Government Code.
- COUNT 3: Respondents Mark Leno, Leno 2004 and James Nickoff failed to timely file a late contribution report that was due on or about February 27, 2004, disclosing the receipt of \$3,200 from David Roa Pruitt for State Assembly, on or about February 26, 2004, in violation of section 84203, subdivision (a) of the Government Code.
- COUNT 4: Respondents Mark Leno, Leno 2004 and James Nickoff accepted a contribution in excess of the \$3,200 contribution limit in connection with the March 2, 2004 State Assembly General election, in violation of section 85301, subdivision (a) of the Government Code.

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<sup>1</sup> The Political Reform Act is contained in sections 81000 through 91015 of the California Government Code. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations unless otherwise indicated.

## **SUMMARY OF THE LAW**

### **Duty to File Periodic Campaign Statements and Late Contribution Reports**

An express purpose of the Act, as set forth in section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Section 82013, subdivision (a) defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as a “recipient committee.” Under section 82016, a recipient committee controlled by a candidate is a “controlled committee.”

Section 84200, subdivision (a) requires candidates and their controlled committees to file semi-annual campaign statements each year no later than July 31, covering the reporting period January 1 to June 30, and no later than January 31, covering the reporting period July 1 to December 31. In addition, section 84200.5, subdivision (e) requires candidates and their controlled committees to file two pre-election campaign statements before an election in which the candidate appears on the ballot.

Section 84203, subdivision (a), requires every committee to file a late contribution report within twenty-four hours of making or receiving a late contribution. Section 82036 defines a “late contribution” as any contribution totaling \$1,000 or more made to a candidate, a controlled committee, or a primarily formed committee, during the period before an election, but after the closing date of the last campaign statement required to be filed before the election. The late contribution reporting period for the March 2, 2004 election was February 15, 2004 through March 1, 2004.

### **Duty to Abide by Contribution Limits**

The Act imposes limits on the contributions that may be made to candidates for elective state office. Section 82015, subdivision (a) defines a “contribution” as any payment, including a loan, made for political purposes for which full and adequate consideration is not made to the donor. Regulation 18215, subdivision (a) provides that a payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or if it is received by a candidate. Section 82007 defines a “candidate” to include an individual who receives a contribution or makes an expenditure with a view of bringing about his or her election to any elective office. Section 82024 defines “elective state office” to include the office of a member of the Legislature.

Under section 85301, subdivision (a), a person may not make to a candidate for elective state office, other than a candidate for statewide elective office, a contribution totaling more than \$3,000 per person. Section 83124 requires the Commission to biennially adjust the contribution

limits in section 85301 to reflect changes in the Consumer Price Index. For 2004, the contribution limit from a person to a candidate for statewide office was \$3,200 per election.

### **Liability of Committee Treasurers**

As provided in section 84100, every committee shall have a treasurer. Under section 84100 and regulation 18427, subdivision (a), it is the duty of a committee's treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Under sections 83116.5 and 91006, a committee's treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

### **SUMMARY OF THE FACTS**

Respondent Mark Leno was a candidate for the Assembly in the Thirteenth District in the March 3, 2004 Primary election, as well as the November 2004 General election. Leno 2004 (hereinafter, the "Committee") was his controlled committee. James Nickoff was the treasurer of the Committee at all times relevant to this matter.

#### **Counts 1 – 3 Failure to File Late Contribution Reports Reporting Contributions Made**

The late contribution reporting period for the March 2, 2004 election was February 15, 2004 through March 1, 2004.

Under section 84203, subdivision (a), Respondents were required to file a late contribution report within 24 hours of making a contribution of \$1,000 or more during the late reporting period February 15, 2004 through March 1, 2004. Respondent Committee made seven contributions of \$1,000 or more during the late reporting period. Respondent Committee was therefore required to file late contribution reports reporting the making of those contributions as follows:

Count	Date made	Recipient	Amount
1	February 19, 2004	(a) Committee to Re-elect Gloria Negrete McLeod (b) Friends of Pedro Nava 2004 (c) Juan Arambula for Assembly (d) Patty Berg for Assembly (e) Wolk for Assembly	\$3,200 each
2	February 20, 2004	Heidi von Szeliski for Assembly	\$3,200
3	February 26, 2004	David Roa Pruitt for State Assembly	\$2,200
Total contributions made and unreported:			\$21,400

Respondents' failure to file three late contribution reports during the late reporting period constitutes three violations of section 84203, subdivision (a).

**Count 4**  
**Receiving a Contribution in Excess of the Contribution Limit**

Respondent Mark Leno, as a candidate for elective state office, may only receive a contribution totaling \$3,200 per person for each of the 2004 Primary and General elections.

On April 10, 2003, Respondent Committee received a contribution from Conwest Resources, Inc. in the amount of \$1,500. On December 31, 2003, Respondent Committee received another contribution from Conwest Resources, Inc. but this time, in the amount of \$3,000. Additionally, on October 22, 2004, Respondent Committee received a third contribution from Conwest Resources, Inc. in the amount of \$3,200, making Respondent Committee in receipt of contributions for a total of \$7,700 from Conwest Resources, Inc, which is \$1,300 over the contribution limits.

Upon notification through the Franchise Tax Board's audit, Respondents reopened Respondent Committee, refunded the \$3,200 contribution to Conwest Resources, Inc., filed an amended semi-annual statement for the refund, and terminated.

**CONCLUSION**

This matter consists of four counts that carry a maximum possible administrative penalty of Twenty Thousand Dollars (\$20,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence of lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the Respondent upon learning of the violations voluntarily filed appropriate amendments to provide full disclosure.

Regarding Counts 1-3, the typical stipulated administrative penalty for failing to disclose a late contribution in cases resolved outside the Commission's Streamlined Late Contribution Enforcement Program is 15 to 25 percent of the amount of the undisclosed contribution, depending upon the circumstances of the violation. In this matter, the amounts of the undisclosed late contributions were relatively low, and the reports were filed when the error was discovered in the electronic format. Accordingly, an administrative penalty in the amount of \$2,000 for Count 1 and \$1,000 for Counts 2 and 3 (\$4,000 total) is appropriate for the violations.

Regarding Count 4, administrative penalties for the conduct of accepting a contribution in excess of the applicable contribution limit is a serious violation of the Act as it harms the integrity of the election process. In this case, Respondent Committee mistakenly accepted the additional contribution through a change in software for the processing of contributions between the Primary and General elections. In addition, when the error became know, Respondents reopened the Committee and refunded the contribution. Accordingly, imposing an administrative penalty of \$2,000 is appropriate.